

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE BARD IVC FILTERS PRODUCTS
LIABILITY LITIGATION

No. MD-15-02641-PHX-DGC

Member Case Number: CV-17-00869-PHX-DGC

**MOTION FOR LEAVE TO FILE AN
AMENDED SHORT FORM COMPLAINT**

**AMENDED SHORT FORM COMPLAINT
WITH STRIKETHROUGH AND CHANGES
ATTACHED HERETO AS “EXHIBIT A” IN
COMPLIANCE WITH LOCAL RULE 15.1(a)**

**AMENDED SHORT FORM COMPLAINT
ATTACHED**

Now come Plaintiffs in Member case number CV-17-00869-PHX-DGC, Michael and Iris Newson, by and through the undersigned counsel, and hereby file this Motion for Leave to File an Amended Short Form Complaint. Amended Short Form Complaint with strikethrough and changes is Attached hereto as “Exhibit A” in compliance with Local Rule 15.1(a). Amended Short Form Complaint is also attached hereto as “Exhibit B.”

Plaintiffs file this Motion pursuant to Federal Rule of Civil Procedure 15(a)(2) which states, in pertinent part, “a party may amend its pleading only with . . . the court’s leave. The court should freely give leave when justice so requires.” With this Amended Short Form Complaint Plaintiffs wish to only more accurately describe the type of Bard IVC filter involved now that the type of Bard IVC filter involved has been accurately described and revealed to them. The amendment does not prejudice the Defendants, more accurately reflects the evidence, and is just.

WHEREFORE, Plaintiffs files this Motion for Leave to File an Amended Short Form Complaint and ask that this Court grant the Motion and accept the attached Amended Short Form Complaint attached hereto as "Exhibit B."

Respectfully submitted,

/s/ Thomas D. Robenalt

THOMAS D. ROBENALT (#0055960)
THE ROBENALT LAW FIRM, INC.
23550 Center Ridge Road, Suite 103
Westlake, OH 44145
Phone: (216) 223-7535
Fax: (216) 860-4390
Email: trobenalt@robenaltnlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that the above document was served electronically, via the Court's electronic notification system to Counsel of Record on this 12th day of June 2017.

Respectfully submitted,

/s/ Thomas D. Robenalt

THOMAS D. ROBENALT (#0055960)
THE ROBENALT LAW FIRM, INC.

EXHIBIT A

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3
4 IN THE UNITED STATES DISTRICT COURT
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FOR THE DISTRICT OF ARIZONA
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9 IN RE BARD IVC FILTERS
10 PRODUCTS LIABILITY LITIGATION
11
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No. MD-15-02641-PHX-DGC
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**AMENDED SHORT FORM COMPLAINT
FOR DAMAGES FOR INDIVIDUAL
CLAIMS AND DEMAND FOR JURY
TRIAL**
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Plaintiff(s) named below, for their Amended Complaint against Defendants named below, incorporate the Master Complaint for Damages in MDL 2641 by reference (Doc. 364). Plaintiff(s) further show the Court as follows:

1. Plaintiff/Deceased Party:

Michael Newson

19450 Lorain Road

Fairview Park, Ohio 44126
10

2. Spousal Plaintiff/Deceased Party's spouse or other party making loss of consortium claim:

Iris Newson

19450 Lorain Road

Fairview Park, Ohio 44126
11

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

None
12

4. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence at the time of implant:

Ohio
13

1 5. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence
2 at the time of injury:

3 Ohio

4 6. Plaintiff's current state(s) [if more than one Plaintiff] of residence:

5 Ohio

6 7. District Court and Division in which venue would be proper absent direct
7 filing:

8 United States District Court for the Northern District of Ohio Eastern
9 Division

10 8. Defendants (check Defendants against whom Complaint is made):

11 C.R. Bard Inc.

12 Bard Peripheral Vascular, Inc.

13 9. Basis of Jurisdiction:

14 Diversity of Citizenship

15 Other: _____

16 a. Other allegations of jurisdiction and venue not expressed in Master
17 Complaint:

18 _____
19 _____
20 _____

21 10. Defendants' Inferior Vena Cava Filter(s) about which Plaintiff(s) is making
22 a claim (Check applicable Inferior Vena Cava Filter(s)):

23 Recovery® Vena Cava Filter

24 G2® Vena Cava Filter

25 ~~G2® Express Vena Cava Filter~~

26 G2® X Vena Cava Filter

27 **Eclipse® Vena Cava Filter**

28 Meridian® Vena Cava Filter

1 Denali® Vena Cava Filter

2 Other: _____

3 11. Date of Implantation as to each product:

4 ~~January 19, 2012~~ January 18, 2012

5 12. Counts in the Master Complaint brought by Plaintiff(s):

- 6 Count I: Strict Products Liability – Manufacturing Defect
- 7 Count II: Strict Products Liability – Information Defect (Failure
8 to Warn)
- 9 Count III: Strict Products Liability – Design Defect
- 10 Count IV: Negligence – Design
- 11 Count V: Negligence – Manufacture
- 12 Count VI: Negligence – Failure to Recall/Retrofit
- 13 Count VII: Negligence – Failure to Warn
- 14 Count VIII: Negligent Misrepresentation
- 15 Count IX: Negligence *Per Se*
- 16 Count X: Breach of Express Warranty
- 17 Count XI: Breach of Implied Warranty
- 18 Count XII: Fraudulent Misrepresentation
- 19 Count XIII: Fraudulent Concealment
- 20 Count XIV: Violations of Applicable Ohio Law Prohibiting
21 Consumer Fraud and Unfair and Deceptive Trade Practices
- 22 Count XV: Loss of Consortium
- 23 Count XVI: Wrongful Death
- 24 Count XVII: Survival
- 25 Punitive Damages

26 13. Jury Trial demanded for all issues so triable?

27 Yes

28 No

1 RESPECTFULLY SUBMITTED this 12th day of June, 2017.
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Respectfully submitted,

4 /s/ Thomas Robenalt
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6

Thomas D. Robenalt (Ohio Reg. 0055960)
John P. Colan (Ohio Reg. 0081778)
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trobennalt@robenaltlaw.com
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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 12th day of June, 2017, I mailed the attached document
17 to the Clerk's Office for filing.
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/s/Thomas Robenalt
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EXHIBIT B

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FOR THE DISTRICT OF ARIZONA
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15 FOR DAMAGES FOR INDIVIDUAL
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21 below, incorporate the Master Complaint for Damages in MDL 2641 by reference (Doc.
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1. Plaintiff/Deceased Party:

25 Michael Newson
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19450 Lorain Road
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Fairview Park, Ohio 44126
1. Spousal Plaintiff/Deceased Party's spouse or other party making loss of
2. consortium claim:

3. Iris Newson
4. 19450 Lorain Road
5. Fairview Park, Ohio 44126
6. Other Plaintiff and capacity (i.e., administrator, executor, guardian,
7. conservator):
8. None
9. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence
10. at the time of implant:
11. Ohio
12.

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1 5. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence
2 at the time of injury:

3 Ohio

4 6. Plaintiff's current state(s) [if more than one Plaintiff] of residence:

5 Ohio

6 7. District Court and Division in which venue would be proper absent direct
7 filing:

8 United States District Court for the Northern District of Ohio Eastern
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27 **X Eclipse® Vena Cava Filter**

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4 /s/ Thomas Robenalt
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